

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

2. On September 30, 2004 the Department denied the petitioner's application. Hearings in the matter were held on October 21 and November 17, 2004. The petitioner was able

to pay her rent for October and November, but she is still behind for August and September.

3. The sole source of income for the petitioner and her family is her husband's employment as a mechanic. Until last month he worked for a garage as a salaried employee. However he was required to furnish his own tools.

4. The petitioner's husband's gross wages for August were \$2,334 and for September, \$2,022. Out of these wages was withheld an amount of \$505 a month for child support. The petitioner and her family live in a rent-subsidized apartment. As noted above, their rent for August and September was \$660 a month. The Department determined that the petitioner had additional essential expenses for food of \$434 and for utilities of \$150 in each of those two months. The Department also considered an allowable standard work expense (including tax withholdings) of \$250. The total expenses allowed by the Department as deductions from the petitioner's gross income for those months were \$1,999.

5. The Department does not dispute the petitioner's allegation that her husband made weekly installment payments during this time of \$150 (over \$600 each month) for tools he had purchased that were essential to his job. The petitioner also alleges (not disputed by the Department) that she spent

a total of \$800 during those two months for new school clothes for her six children. It is also not disputed that the petitioner purchased a second car during this time for \$350 and spent an additional \$100 on repairs. The petitioner maintains that the car is a necessity because she has no means of transportation for herself and her children because her husband needs to use the other car for his work.

6. The Department determined that none of the expenses in paragraph 5, above, was "essential" to the family within the meaning of the EA regulations (see *infra*).

7. The petitioner does not dispute that at the time she completed her application for EA (mid September 2004) all funding for "Category II" assistance under the EA program had been depleted (see *infra*).

ORDER

The Department's decision is reversed and the matter is remanded to the Department to further consider the circumstances surrounding the petitioner's purchase of a second car and her husband's tool payments.

REASONS

The regulations governing the EA rental arrearage program are reproduced below.

As noted above, when the petitioner applied for EA, all Category II funds appropriated for this fiscal year had been expended. See § 2813.32B, *supra*. Thus, the petitioner had to meet the eligibility requirements for Category I assistance as defined, above, in § 2813.32A.

In this regard the petitioner clearly does not meet the criteria of § 2813.32A(1); i.e., she does not allege that an "emergency or extraordinary event" occurred in her family during August or September. The dispute in this matter centers on the Department's reading of § 2813.32(A)(2), supra. Under this provision, to qualify for Category I assistance an applicant must demonstrate that rent payments were not made "because the family's essential expenses exceeded their benefits and available gross income, after deduction of the standard work expense and allowable self-employment business expenses".

In this case the Department determined that the family's "essential expenses" were for rent, utilities, child support, food, and "standard" work expenses, which appear to include tax withholdings from her husband's paychecks. As noted above, the Department calculated these expenses as totaling \$1,999 a month. Because this total was less than the family's gross income in August (\$2,334) and September

(\$2,022), the Department determined that the petitioner's essential expenses did not exceed available income within the meaning of the above provision.

However, § 2813.32A(2) only lists certain "essential expenses" that are "include[d]". It does not state that the list is necessarily exclusive. In reaching its decision in this matter, it appears that the Department *summarily* concluded that none of the payments the petitioner had made in August and September toward children's school clothes, a second car, or her husband's tools qualified as an "essential expense" under the above regulation. At least two of these items, however, should have merited closer scrutiny under the regulation.

Regarding the new clothes the petitioner bought her children for school, the regulation includes the provision: "Reasonable school expenses do not include general purpose wearing apparel but do include wearing apparel that is not general purpose, not provided by the school, and required for a specific school activity in which the family member participates". § 2813.32A(2), *supra*. Inasmuch as the petitioner does not allege that any of the school clothes she bought were anything other than general wearing apparel for

her children, it appears this aspect of the Department's decision must be affirmed.

However, the regulation does not mention *any* expense related to a second car for a family. Unfortunately this issue was not explored in detail at the hearing. Although the petitioner did not specifically allege that the purchase and initial repair of a second car was a medical or economic necessity, the fact that she has six school age children appears to merit some further exploration into whether a second car should nonetheless be considered "essential".

Under the above regulation her husband's \$150 a week tool payments certainly deserved more consideration than the Department gave them. The regulations would have *clearly* allowed all or part of this expense if the petitioner's husband was self-employed. See § 2808.2(d) ("interest of installment payments for purchase of. . .tools"). Even though the petitioner's husband is a salaried employee, if timely installment payments are necessary for him to retain possession of his mechanics tools, and if his possession of such tools is necessary for him to keep his job, under the clear intent of the regulation such payments would have to be considered "essential".

Based on the Department's calculations, if all or part of either the petitioner's payments for a second car or her husband's tool payments were allowed, the family's essential expenses for August and September may well have been in excess of its gross income. Given that a family with six children may be threatened with the loss of what otherwise appears to be stable and relatively inexpensive housing, it must be concluded that the Department is compelled to apply the above regulation with more consideration to the family's actual circumstances.

Even if the Department concludes that the petitioner's spending decisions in August and September were questionable, based on the above facts, it would appear somewhat harsh to conclude that she did not demonstrate a "good faith effort to pay for essential expenses" within the meaning of § 2813.32(A)(2), supra. In Fair Hearing No. 18,354, a case in which the actions of the petitioner were much more egregious than those of the petitioner herein, the Board observed:

. . . determining the personal culpability of a low-income person, especially one with young children, who is facing the loss of housing will usually be a sensitive and difficult question. Although the above regulations contemplate a careful case-by-case analysis of all the circumstances that may have led to an applicant's pending eviction, it would be Draconian, or at least naive, not to recognize that there will often exist at least some lapses of judgement or instances of



questionable money management on the part of an applicant seeking EA for back rent. While the purposes of the EA program dictate that it be administered liberally (see § 2800), the regulations are clear that funding for the back rent part of the program is limited and that such assistance "is not an entitlement". § 2813.3, supra.

For the above reasons, the Department's decision in this matter is reversed and the matter is remanded to the Department for further consideration in accord with the foregoing. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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